KUMPULAN GUTHRIE SDN. BHD.

v.

VALAITHAN RAMAN NAIR & ORS.

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CIVIL APPEAL NO. 16-21-88]
2 SEPTEMBER 1989

LABOUR LAW: *Appeal against decision of labour department awarding termination benefits - Meaning of employer in s. 2 Employment Act.*

The ten complainants were employed as rubber tappers in Ladang Lambak Elaeis which is owned by Permodalan Nasional Berhad and where Kumpulan Guthrie Sdn. Bhd. is the manager. The ten complainants filed a complaint at the Labour Department in Kluang against the Pengurus of Ladang Lambak Elaeis for termination benefits under the Employment (Termination and Lay-Off Benefits) Regulations 1980 of the Employment Act 1955.

The complainants became redundant when the rubber trees in Ladang Lambak Elaeis were felled for replanting. A letter was sent to each of them which offered three options namely a transfer to Ladang Sembrong as a rubber tapper or a transfer to Ladang Tun Dr. Ismail as a harvester or a transfer from the job of a rubber tapper to that of general worker within Ladang Lambak Elaeis. The complainants refused to accept any of the three positions as the new employment offered to them was less favourable as it would entail in the uprooting of their families, the complainants who were working only between 6 to 6½ hours would have had to work 8 hours per day as a general worker for 'slightly' lower wages and that they would have to work an extra 1½ hours to earn the same amount that they were earning as ordinary tappers.

The defendant contended that the refusal by the complainants to accept the new employment constituted voluntary resignation on their part and they were accordingly not entitled to the payment of termination benefits.

The Penolong Pengarah ordered the defendant to pay a total sum of RM14,687.37 as termination benefits to the complainants.

The defendant appealed on two grounds. Firstly that having regard to the definition of 'employer' in s. 2 of the Act the complaint should not have been brought against the defendant but against Kumpulan Guthrie. Secondly the Penolong Pengarah should have waited to consider the submission that was to have been made on behalf of the defendant for the payment of termination benefits to the complainants which would have directed her attention to the provisions of reg. 4 of the Employment (Termination and Lay-Off Benefits) Regulations and she would have come to the conclusion that the terms of the new employment in one of the three alternative jobs were not less favourable than those they had enjoyed on Ladang Lambak Elaeis.

Held:

[1] It is clear from the records that both parties were required to hand in their written submission by a certain date to which only the respondent complied. The Penolong Pengarah was entitled to give her decision on the basis of the evidence she had recorded and the only written submission she had received. There was no breach of the rules of natural justice in the cause of action that she took.

[2] In her written judgment she did direct her attention to reg. 4 and found for a fact that the complainants were justified in rejecting the offer of the new employment. The defendant did not suffer from any injustice or prejudice when the Penolong Pengarah gave her decision before or without giving consideration to a written submission on behalf of the defendant.

[3] The question as to who the actual employer was could not have affected the finding of the Penolong Pengarah of the fact that the new employment was less favourable than the previous one. There is therefore no merits in this ground of appeal.

[Appeal dismissed with costs.]

Legislation referred to:
Employment Act 1955, ss. 2, 13(2), 60J, 69

For the defendant/appellant - Yusof Chan; M/s. Shearn Delamore & Co.
For the complainants/respondents - P. Kuppusamy & Co.

JUDGMENT

LC Vohrah J:

Kumpulan Guthrie Sendirian Berhad ('Kumpulan Guthrie') is the manager of Ladang Lambak Elaeis, an estate which is owned by Permodalan National Berhad. Valaithan a/l Raman Nair and the ten other respondents ('the complainants') were employed as rubber tappers on Ladang Lambak Elaeis and they filed a claim at the Labour Department in Kluang against the Pengurus of Ladang Lambak Elaeis ('the defendant') for termination benefits under the Employment (Termination and Lay-off Benefits) Regulations 1980 made pursuant to s. 60J of the Employment Act 1955. After enquiring into the complaint under s. 69 of the Act the Penolong Pengarah Buruh ordered the defendant to pay a total sum of RM14,687.37 as termination benefits to the complainants.

The undisputed facts insofar as they were relevant to the appeal were as follows. The complainants became redundant when the rubber trees in Ladang Lambak Elaeis were felled for replanting. Each of them was served with a notice dated 13 January 1987 bearing the Kumpulan Guthrie letter-head and logo (exhibit C3), signed by the 'assistant-in-charge, South' of Ladang Lambak Elaeis and stating that "you are now on a day to day basis a rubber tapper and you will be transferred as a general worker when the trees are felled in early February and March 1987". Subsequently on 28 February 1987 the defendant sent each of them a letter which offered three options - (i) a transfer of Ladang Sembrong as a rubber tapper, (ii) a transfer to Ladang Tun Dr. Ismail as a harvester or (iii) a transfer from the job of rubber tapper to that of general worker within Ladang Lambak Elaeis. Although Ladang Sembrong and Ladang Tun Dr. Ismail belonged to Kumpulan Guthrie the complainants refused to accept any of these three positions and it was argued on behalf of them that the new employment offered to them was less favourable and they were accordingly entitled to the payment of termination benefits under reg. 4(2)(a). It was contended on behalf of the defendant that the refusal by the complainants' to accept the new employment constituted voluntary resignation on their part and they were accordingly not entitled to the payment of termination benefits. The Penolong Pengarah Buruh who decided the dispute found, *inter alia*, that the defendant by virtue of s. 2 of the Employment Act 1955 could be considered as the employer for the purposes of the complainants' claim; that the proposed transfer from Ladang Lambak Elaeis to the two other estates, Ladang Sembrong and Ladang Tun Dr. Ismail some 40 to 60 miles away from Ladang Lambak Elaeis entailing the uprooting of their families was a good reason for the complainants to reject the defendant's offer of the new employment; and that

the complainants who as rubber tappers working only between 6 to 6½ hours per day on Ladang Lambak Elaeis would have had to work 8 hours per day there as general workers for 'slightly' lower wages and that they would have had to work an extra 1½ hours to earn the same amount that they were earning as ordinary tappers and that accordingly general workers in Ladang Lambak Elaeis earned 'effectively' much less than rubber tappers there.

In the appeal before me Counsel for Kumpulan Guthrie challenged the decision of the Penolong Pengarah Buroh on two grounds:

(1) that having regard to the definition of "employer" in s. 2 of the Act the complaint should have been brought not against the defendant but against Kumpulan Guthrie; and

(2) that the Penolong Pengarah Buroh should have waited to consider the submission that was to have been made on behalf of the defendant before giving her decision for the payment of termination benefits to the complainants.

First, I will deal with the second ground. Counsel for Kumpulan Guthrie contended that had the Penolong Pengarah Buroh considered the submission that was to have been made on behalf of the defendant, her attention would have been directed specifically to the provisions of reg. 4 of the Employment (Termination and Lay-off Benefits) Regulations and she would have come to the conclusion that the terms of the new employment in one of the three alternative jobs were not less favourable than those they had enjoyed as rubber tappers in Ladang Lambak Elaeis. Counsel for the complainants argued that since the claim itself was based on reg. 4(2)(a) the Penolong Pengarah Buruh must have considered these provisions especially as the regulation was dealt with in the written submission filed on behalf of the complainants. It is clear from the record that both parties were required to hand in their written submissions within one week of 7 December 1987. When these written submission were not received by 14 December 1987 she extended the deadline to 23 December 1987. Only the complainants complied with the new deadline and, in my view, she was fully entitled to give her decision on the basis of the evidence she had recorded and the only written submission she had received. There was no allegation of any breach of the rules of natural justice in the course of action that she took - only the complaint that had she waited to consider the written submission of the defendant her attention would have been drawn specifically to the provisions of reg. 4 and she might then have decided that the complainants were not entitled to termination benefits. It was however clear from her written judgment that although she made reference to reg. 8 relating to the change of ownership of business and cl. 3(ii)(b) of the memorandum of agreement between MAPA and NUPW, she did direct her attention to reg. 4 and found for a fact that the complainants were justified in rejecting the offer of new employment in Ladang Sembrong or Ladang Tun Dr. Ismail situated 40 to 60 miles away from Ladang Lambah Elaeis as acceptance would have meant the uprooting of family life. She also found for a fact that had they accepted the offer to stay on at Ladang Lambah Elaeis to work as general workers they would have earned much less than what they were earning as rubber tappers as was obvious from the comparative wage tables. What was therefore uppermost on her mind was the question as to whether the new contract of employment was in terms and conditions less favourable than those on which they were previously employed and it was obvious from the record that she found for a fact that the new terms and conditions were less favourable and that the complainants were accordingly entitled to reject their new employment and that therefore termination benefits were payable. In my view the defendant suffered neither injustice nor prejudice when the Penolong Pengarah Buruh gave her decision before or without giving consideration to a written submission on behalf of the defendant. I therefore found no merit in this ground.

As to the first ground it was the contention of Counsel for Kumpulan Guthrie that the claim should have been brought directly against Kumpulan Guthrie and not against the defendant because by the wrong party having been named the Penolong Pengarah Buruh was made to labour under the misapprehension that the defendant (or Ladang Lambak Elaeis) was the actual employer of the complainants and that the contracts of service of the complainants were with the defendant and not with Kumpulan Guthrie. In considering the letter of 28 February 1987 offering the complainants the three options, the Penolong Pengarah Buruh having regard to the provisions of s. 2 of the Act treated the defendant as the employer for the purposes of the claim before her but it was clear to me that the issue that was uppermost in her mind (and the issue to which Counsel asked me specifically to address my mind in the appeal) was whether the terms and conditions of the new employment offered to the complainants in the letter were less favourable than those on which they were previously employed. Whether Kumpulan Guthrie should have been cited instead of the defendant as the defendant in the claim before the Penolong Pengarah Buruh, in my view, was not important because the issue, and the correct issue, which pre-occupied her mind was whether (in her own words):

> (the) employment of the 11 complainants who were rubber tappers had in fact been terminated by the defendant by (i) transferring the complainants to Sembrong Estate, Layang-layang or (ii) giving alternative employment as general workers in the same estate or (iii) change of work as harvesters to another Estate belonging to the same company, when all the rubber trees in Lambak Elaeis were felled.

She recognised the right of the employer as such to transfer employees but she found for a fact (as I have already observed when dealing with the second ground) that the complainants had good reason to reject the offer for transfer. Of the complainants, seven were women who obviously would have been hard put to it if they had had to work as harvesters as they would then have had the arduous and risky job of climbing ladders to chop down the oil palm fruit. The question as to who the actual employer was could not have affected her finding of fact that the new employment was less favourable than the previous one. I therefore found no merit in this ground.

I must say I readily agreed with Counsel for the complainants that the unilateral act of the defendant in converting the complainants from the status of permanent employees to that of daily-paid workers was clearly a case of subjecting the complainants to less favourable employment of a kind which constituted wilful breach by the defendant of a condition of the complainants' contract of service under s. 13(2) of the Act entitling them *per se* to termination benefits.

In my view the Penolong Pengarah Buruh addressed the real issue before her correctly having regard to equity and the substantial merits of the claim.

The appeal was accordingly dismissed with costs.

Also found at [1990] 1 CLJ 48